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MAY 06 2005

FILE:

Office: NEW YORK, NEW YORK

Date:

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under §§ 301(g) and 320 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401(g) and 1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on September 13, 1991 in Canada. The applicant's mother was also born in Canada, but she derived U.S. citizenship at birth from her mother. The applicant's father is not a U.S. citizen. The applicant's parents never married, and the applicant has always lived with her mother. The record reflects that the applicant entered the United States in December 1997 as a visitor. There is no evidence that she ever obtained lawful permanent resident status. The applicant seeks a certificate of citizenship pursuant to §§ 301 and 320 of the Immigration and Nationality Act (the Act); 8 U.S.C. §§ 1401 and 1431, based on the claim that she is entitled to U.S. citizenship through her mother.

The district director concluded the applicant failed to establish how her mother obtained her U.S. citizenship, or that her mother was physically present in the U.S. prior to the applicant's birth for the requisite time period set forth under the Act. The district director also determined that the applicant did not establish that she was present in the United States pursuant to any lawful permanent status. The application was denied accordingly. On appeal, the applicant, through her mother, states that she attempted to procure additional documentation in support of her application, but she was unsuccessful. The AAO has reviewed all the evidence on the record and concurs with the district director's findings regarding the applicant's noncompliance with the statutory requirements set forth at §§ 301 and 320 of the Act.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born in Canada in 1991. In order to establish that she derived U.S. citizenship at birth, the applicant must establish that her mother satisfies the requirements set forth in § 301(g) of the Act, as in effect at the time of her birth.

Section 301(g) of the Act, 8 U.S.C. § 1401, states in pertinent part, that the following shall be nationals and citizens of the United States at birth:

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years . . . .

The record reflects that the applicant failed to establish that her mother was a U.S. citizen at the time of the applicant's birth. The district director noted that the applicant did not provide the previously requested documentation showing how the applicant's mother obtained her U.S. citizenship. The applicant's mother indicates that she derived citizenship from her own U.S. citizen mother, and that her citizenship was recognized at the U.S. consulate in Toronto in approximately 1975. On the Form I-290B, the applicant's mother details her attempts to obtain information regarding how she obtained U.S. citizenship. She also writes that she planned to send a brief and/or additional evidence to the AAO within 30 days. As of this date, however, the AAO has received no additional evidence from the applicant; therefore, the record is complete. The record does not establish that the applicant's mother was a U.S. citizen at the time of the applicant's birth.

In *Matter of V*, 9 I&N Dec. 558, 560 (BIA 1962), the Board of Immigration Appeals determined that the term "physical presence" meant "continuous physical presence" or "residence" in the United States. In order to meet the physical presence requirements as set forth in § 301(g) of the Act, the applicant must establish that her mother was physically present in the U.S. for five years between her mother's 1963 birth and her own birth in 1991, and that two of the years occurred after January 23, 1977, when his mother turned fourteen.

The applicant submitted no evidence to establish or indicate that her mother was physically present in the United States during the requisite period described above. Moreover, the AAO notes that the applicant's N-600 application states that her mother resided in Canada until December 1, 1997. The applicant therefore failed to establish that she qualifies for derivative citizenship under § 301(g) of the Act.

Section 320 of the Act applies to a child born outside of the United States, but residing in the U.S., and provides in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
  - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
  - (2) The child is under the age of eighteen years.
  - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

There is no evidence on the record that the applicant was residing in the United States pursuant to a lawful admission for permanent residence. The applicant has therefore failed to establish that she meets the requirements for automatic citizenship as set forth in § 320 of the Act.

The AAO notes that the district director also discussed § 322 of the Act, which applies to children residing outside the United States. The district director pointed out that the applicant does not reside outside the United States, and therefore does not qualify for a certificate of citizenship pursuant to this section of the Act.

The applicant has failed to establish eligibility for a certificate of citizenship under any section of the Act. 8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met her burden, and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.